

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Hassan Chunn, *et al.*,

Petitioners,

v.

Warden Derek Edge,

Respondent.
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**REVISED
JOINT PROPOSED
EXHIBIT AND WITNESS
LISTS**

Civil Action No.
20-cv-1590

(Kovner, J.)

Pursuant to the Court's May 2, 2020 Order, the parties herein provide their revised witness and exhibit list in advance of the May 12, 2020 Preliminary Injunction Hearing. This document replaces the parties' joint submission that was filed on May 10, 2020. *See* Dkt. No. 87.

I. WITNESS LISTS

Petitioner: Given the expedited nature of these proceedings, and the challenges of conducting a remote hearing, the parties have agreed to rely on declaration testimony in lieu of live testimony for all witnesses except their experts and rebuttal witnesses, subject to a reservation of rights for ongoing negotiations concerning specific witnesses.

Respondent: Without waiving any objections, Respondent agrees with Petitioners that given the expedited nature of these proceedings, and the challenges of conducting a remote hearing, the parties have agreed to rely on declaration testimony—subject to the objections to those declarations set forth below—in lieu of live testimony for all witnesses except those witnesses listed below, subject to a reservation of rights for ongoing negotiations concerning

specific witnesses. Respondents object to any supplementation of the below witness list absent good cause shown.

Subject to the foregoing, the Parties expect to call the following witnesses at the May 12, 2020 hearing:

A. Petitioners' Witness List

Witness name	Brief narrative statement of the expected testimony	Respondent's Objections, if any
Dr. Homer Venters	Dr. Venters is a physician, internist and epidemiologist who is an expert in correctional health care and will opine about BOP's efforts to prevent the spread of COVID-19 at the MDC.	
Petitioner reserves the right to call additional rebuttal witnesses, including N.E. English, for good cause shown.		

B. Respondent's Witness List

Witness name	Brief narrative statement of the expected testimony	Petitioners' Objections, if any
Jeffrey Beard, Ph. D.	Dr. Beard is an expert in the fields of prison management and practices and will opine about BOP's efforts to prevent the spread of COVID-19 at the MDC.	
Asma Tekbali, MPH	Ms. Tekbali is an expert in the field of epidemiology and will opine about BOP's efforts to prevent the spread of COVID-19 at the MDC.	Petitioners submitted a motion <i>in limine</i> concerning Ms. Tekbali's testimony. <i>See</i> Dkt. No. 86. Respondent opposed Petitioners' motion <i>in limine</i> . <i>See</i> Dkt. No. 89.
N.E. English, Assistant Director of the BOP	Assistant Director English is expected to testify regarding	

	conditions at the MDC.	
Respondent reserves the right to call additional rebuttal witnesses for good cause shown. Respondent further reserves the right to object to having any witnesses since the Court lacks jurisdiction as set forth in Respondent's Motion to Dismiss.		

II. EXHIBIT LISTS

A. Petitioners' Exhibit List¹

No.	Bates Range/ Docket No.	Description	Respondent's Objections, if any
1	BOP 8-29	USDOJ FBOP Program Statement on Infectious Disease Managements, 06/03/2014	
2	BOP 31-61	FBOP Pandemic Influence Plan, Oct. 2012	
3	BOP 61-63	FBOP Influenza Isolation and Quarantine, Oct. 2012	
4	BOP 64-84	FBOP Pandemic Influenza Plan Module 3, Oct. 2012	
5	BOP 147-203	FBOP Program Statement on Patient Care, 06/03/2014	
6	BOP 88-115	CDC Guidance on Management of COVID-19 in Correctional and Detention Facilities.	
7	BOP 85-86	FBOP Update on COVID-19, 03/24/2020	
8	BOP 87	COVID-19 Action Plan: Phase V, 03/31/2020	
9	BOP SCR 1-888	Sick Call Requests	
10	Dkt. 47-1	Declaration of Lt. Commander Jordan, 04/15/2020	
11	Dkt. 1-4	Chunn et al. v. Edge- D. Von Dornum Declaration, 03/27/2020	Objections Nos. 1, 2. ² Respondent also objects to the extent the declaration contains hearsay from a non-party,

¹ Pursuant to the Court's Individual Practice Rules and the Court's Order at the May 2, 2020 Conference (Tr. 20), the parties will provide any impeachment materials to the Court by email.

² Objection Nos. 1 and 2 are detailed *infra*.

			non-expert attorney
12	Dkt. 60	Chunn et al. v. Edge Amended Petition	
13	Dkt. 18-1, 18-2	Chunn et al. v. Edge Warden King Declaration with Exhibits, 03/31/2020	
14	PETS001600-02	Letter from MCC and MDC Wardens in Nkanga case	
15	Dkt. 26-6	Chunn et al. v. Edge Robert Cohen, M.D. Declaration, 04/03/2020	Objections Nos. 1, 2. Respondent also objects because Dr. Cohen does not address conditions at the MDC.
16	Dkt. 26-4	Chunn et al. v. Edge Dr. Homer Venters' Declaration, 04/02/2020	Objections Nos. 1, 2. Respondent also objects based on hearsay; the document is also cumulative and duplicative.
17	Dkt. 12-12	Chunn et al. v. Edge Supplemental D. Von Dornum Declaration, 03/30/2020	Objections Nos. 1, 2. Respondent also objects to the extent the declaration contains hearsay from a non-party, non-expert attorney
18	Dkt. 12-11	Chunn et al. v. Edge Jaime Meyer Declaration, 03/23/2020	Objections Nos. 1, 2. Respondent also objects because Meyer does not address conditions at the MDC
19	PETS001603-06	FBOP Correcting Myths Doc, https://www.bop.gov/coronavirus/docs/correcting_myths_and_misinformation_bop_covid19.pdf	
20	PETS001607-32	CDC Interim Guidance	.

21	PETS001633	FBOP Expanded testing, 04/24/2020	
22	BOP 145	FBOP COVID-19 Staff Screening tool, Mar. 2020	
23	Dkt. 21	Chunn et al. v. Edge AW King Declaration w/ exhibit, 04/01/2020	
24	BOP SCR 889-922	Sick call requests	
25	Dkt. 72-1	Dr. Homer Venters Expert report from MDC visit, 04/30/2020	Objections Nos. 1, 2. Respondent also objects based on hearsay; the document is also cumulative and duplicative.
26	Dkt. 72 Exhibit 1	30(b)(6) Depo. Transcript of Stacey Vasquez, 04/27/2020	
27	Dkt. 72 Exhibit 2	Powell Declaration, 04/20/2020	Objections Nos. 1, 2
28	Dkt. 72 Exhibit 3	Bynum Declaration, 04/21/2020	Objections Nos. 1, 2
29	Dkt. 72 Exhibit 4	Olivera Declaration, 04/20/2020	Objections Nos. 1, 2
30	Dkt. 72 Exhibit 5	Gomez Declaration, 04/20/2020	Objections Nos. 1, 2
31	Dkt. 72 Exhibit 6	Mabry Declaration, 04/28/2020	Objections Nos. 1, 2
32	Dkt. 72 Exhibit 7	Dixon Declaration, 04/28/2020	Objections Nos. 1, 2
33	Dkt. 72 Exhibit 8	Needham Declaration, 04/28/2020	Objections Nos. 1, 2
34	Dkt. 72 Exhibit 9	Cohen, M.D. Declaration, 03/30/2020	Objections Nos. 1, 2. Respondent also objects because Dr. Cohen

			does not address conditions at the MDC.
35	Dkt. 72 Exhibit 10	Finch Declaration, 04/20/2020	Objections Nos. 1, 2
36	Dkt. 72 Exhibit 11	Nelson Declaration, 04/24/2020	Objections Nos. 1, 2
37	Dkt. 72 Exhibit 12	Platt Declaration, 04/28/2020	Objections Nos. 1, 2
38	Dkt. 72 Exhibit 13	Pierson Declaration, 04/29/2020	Objections Nos. 1, 2
39	Dkt. 72 Exhibit 14	Sojos-Valladares Declaration, 04/28/2020	Objections Nos. 1, 2
40	Dkt. 72 Exhibit 15	30(b)(6) Depo. Transcript of Milinda King, 04/27/2020	
41	Dkt. 72 Exhibit 16	Altino Declaration, 04/24/2020	Objections Nos. 1, 2
42	Dkt. 72 Exhibit 17	Drayton Declaration, 04/21/2020	Objections Nos. 1, 2
43	Dkt. 72 Exhibit 18	Hall Declaration, 04/24/2020	Objections Nos. 1, 2
44	Dkt. 72 Exhibit 19	Carpenter Declaration, 04/22/2020	Objections Nos. 1, 2
45	Dkt. 72 Exhibit 20	Watson Declaration, 04/20/2020	Objections Nos. 1, 2
46	Dkt. 72 Exhibit 21	Wilson Declaration, 04/20/2020	Objections Nos. 1, 2
47	Dkt. 72 Exhibit 22	Miller Declaration, 04/29/2020	Objections Nos. 1, 2

48	Dkt. 72 Exhibit 23	Soria Declaration, 04/17/2020	Objections Nos. 1, 2
49	Dkt. 72 Exhibit 24	Haney Declaration, 04/20/2020	Objections Nos. 1, 2
50	Dkt. 72 Exhibit 25	McCann Declaration, 04/21/2020	Objections Nos. 1, 2
51	Dkt. 76	Corrected Sanchez Declaration, 05/04/2020	Objections Nos. 1, 3
52	Dkt. 72 Exhibit 27	Molina Declaration, 04/17/2020	Objections Nos. 1, 2
53	Dkt. 72 Exhibit 28	Batista Declaration, 04/28/2020	Objections Nos. 1, 2
54	Dkt. 72 Exhibit 29	Singer Declaration 04/27/2020	Objections Nos. 1, 2
55	Dkt. 72 Exhibit 30	Deutsch Declaration, 04/29/2020	Objections Nos. 1, 2
56	Dkt. 72 Exhibit 31	Roberts Declaration, 04/24/2020	Objections Nos. 1, 2
57	Dkt. 72 Exhibit 32	Whitley Declaration, 04/28/2020	Objections Nos. 1, 2
58	Dkt. 72 Exhibit 33	Letter from Congresswoman Nydia M. Velazquez to FBOP 04/06/2020	Objection to the extent it contains inadmissible hearsay
59	Dkt. 72 Exhibit 35	Castillo Declaration, 04/29/2020	Objections Nos. 1, 2
60	Dkt. 72 Exhibit 38	Richardson Statement, 04/20/2020	Objections Nos. 1, 2; further objects as not affirmed under penalties of perjury

61	Dkt. 72 Exhibit 39	Letter from ACLU to FBOP, 03/18/2020	Objection No. 1
62	Dkt. 72 Exhibit 40	Letter from the Office of the Attorney General of D.C. to Director of FBOP, 03/26/2020	Objection No. 1
63	Dkt. 71-1	Declaration of Ayman Rabadi, dated April 29, 2020	Objections Nos. 1, 2
64	Dkt. 71-2	Declaration of Elodia Lopez, dated April 28, 2020	Objections Nos. 1, 3
65	Dkt. 71-3	Declaration of James Hair, dated April 30, 2020	Objections Nos. 1, 2
66	Dkt. 71-4	Declaration of Hassan Chunn, dated April 30, 2020	Objections Nos. 1, 3
67	Dkt. 71-5	Declaration of Rosenfeld re: class counsel, dated April 30, 2020	Objection No. 1
68	Dkt. 71-6	Declaration of Betsy Ginsberg, dated April 30, 2020	Objection No. 1
69	Dkt. 71-7	Declaration of Alex A. Reinert, dated April 30, 2020	Objection No. 1
70	Dkt. 71-8	Declaration of Yeugenia (Jane) Shvets, dated April 30, 2020	Objection No. 1
71	PETS001591	Justin Rodriguez's COVID-19 Test Result (CONFIDENTIAL)	
72	PETS001592-93	Charts of Inmate vs. Staff Positives	
73	PETS001634	Summary chart of Declarations	Objections Nos. 1, 2; the underlying declarations speak for themselves.
74	PETS001596	Photo of masks used by Corrections Officers	Objection as the pictures have not been authenticated, nor does the description identify who took the pictures.
76	PETS001597-99	Declaration of Justin Rodriguez, dated May 5, 2020	Objections Nos. 1, 2
77	PETS001635-48	CV of Dr. Homer Venters	

78	BOP SCR 923-1210	Respondent's supplemental production of sick call requests	
79	Dkt. 91-1	Declaration of Anthony Sanon, dated May 10, 2020	Objections Nos. 1, 2
80	Dkt. 91-2	Respondent's Response to Interrogatory 1, dated April 27, 2020.	
81	Dkt. 91-5	Declaration of Siffredo Gonzalez, dated May 1, 2020.	Objections Nos. 1, 2
82	Dkt. 91-6	Supplemental Report of Dr. Homer Venters, dated May 11, 2020.	Objections Nos. 1, 2. Respondent also objects based on hearsay; the document is also cumulative and duplicative. Respondent further objects given that this report was filed after the expert report deadline and only hours before the May 12 hearing.
83	Dkt. 91-9	Supplemental Declaration of James Hair, dated May 11, 2020	Objections No. 1 and 2
84	Dkt. 91-7	Excerpts from the 30(b)(6) deposition of Stacey Vasquez referenced in Petitioners' Reply Memorandum of Law in Support of Preliminary Injunction.	
85	Dkt 91-8	Excerpts from the 30(b)(6) deposition of Milinda King referenced in Petitioners' Reply Memorandum of Law in Support of Preliminary Injunction.	
86	BOP 237	Blank Sick Call Request	
87	PETS001649-59	Letter re: documents reviewed by Dr. Beard and Dr. Beard's notes	

Petitioners reserve the right to supplement this list for good cause shown.

Respondent's Objection No. 1:

As set forth in his motion to dismiss, Respondent submits that this Court has no jurisdiction in this action and, as a result, Respondent objects to all of the exhibits as irrelevant under Fed R. Evid. 402 and 403.

Additionally, as a general matter, Respondent objects to the extent that Petitioners' requests are cumulative, duplicative, confusing, and/or prejudicial under Fed. R. Evid. 402 and 403; are inadmissible hearsay under Fed. Evid. 801 and 802; and constitute a waste of the Court's time under Fed. R. Evid. 611.

Respondent's Objection No. 2:

With respect to the declaration exhibits listed above, each such exhibit is, indisputably, an out of court statement submitted for the truth of the matters asserted therein, and therefore constitute inadmissible hearsay under Fed. R. Evid. 801 and 802. In some cases, these declarations contain double, and, at times, triple hearsy.

But even assuming that the strict rules of evidence do not apply to a hearing for a motion for a preliminary injunction, these declarations must be rejected in their entirety, as they are unduly prejudicial to Respondent. Specifically, there is no basis for Petitioners to introduce over 30 declarations of non-party witnesses, particularly for purposes of the May 12 hearing, particularly where, as here, no class has been certified or conditionally certified, and only three petitioners (Rabadi,³ Lopez, and Hair) are currently in MDC custody..

It is also prejudicial to Respondent to be forced to rebut self-serving declarations produced by inmates currently incarcerated at MDC when Respondent has not been given any reasonable opportunity to (a) depose any of these inmates or (b) adequately investigate their claims, including those claims with respect to their petitions for compassionate release or home confinement. "[O]ne of the principal goals of the discovery rules [is] preventing trial by ambush and surprise." *Matrix Int'l Textile, Inc. v. Monopoly Textile, Inc.*, No. CV 16-0084 FMO (AJW), 2017 WL 2906015, at *1 (C.D. Cal. May 9, 2017) (quotation omitted); *Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903, 910 (9th Cir. 2008) ("The Federal Rules of Civil Procedure 'contemplate . . . full and equal discovery' . . . so as to prevent surprise, prejudice and perjury' during trial." (citation omitted)).

³ Upon information and belief, Rabadi is scheduled to be released from MDC next week.

B. Respondent's Exhibit List⁴

Ex. No.	Bates Range	Description	Petitioners' Objections, if any
A.	BOP 1-7	SOAP invoices	
B.	BOP 8-29	Program Statement 6190.04 Infectious Disease Management	
C.	BOP 30-63	BOP Pandemic Influenza Plan Module 1: Surveillance and Infection Control, October 2012	
D.	BOP 64-84	Pandemic Influenza Plan Module 3: Health Care Delivery, October 2012	
E.	BOP 85-86	Bureau of Prisons Update on COVID-19 dated March 24, 2020	
F.	BOP 87	BOP COVID-19 Action Plan: Phase Five	
G.	BOP 88-112	CDC Guidance on Management of COVID-19 in Correctional and Detention Facilities	
H.	BOP 113	CDC: Stop the Spread of Germs	
I.	BOP 114	Coronavirus Disease 2019 (COVID-19) Inmate Screening Tool	
J.	BOP 115	CDC Priorities for Testing Patients with Suspected COVID-19 Infection	
K.	BOP 116-133	Pandemic Influenza Plan Module 2: Antiviral Medications and Vaccines, October 2012	
L.	BOP 134-144	Pandemic Influenza Plan Module 4: Care for the Deceased, October 2012	
M.	BOP 145	Coronavirus Disease 2019 (COVID-19) Staff Screening Tool	

⁴ Pursuant to the Court's Individual Practice Rules and the Court's Order at the May 2, 2020 Conference (Tr. 20), Respondent will provide any impeachment materials to the Court via email.

N.	BOP 146-203	Patient Care Program Statement 6031.04 dated June 3, 2014	
O.	BOP 204-205	Hand sanitizer order dated 3/17/20	
P.	BOP 206-207	Wipes, sanitizer and soap order dated 3//16/20	
Q.	BOP 208-209	GOJO 800 series dispenser Black dated 3/16/20	
R.	BOP 210-213	Invoice for HDQC2 Cleaner & Spray bottles dated 3/16/20	
S.	BOP 214-218	Invoice for roller cart bundle and related items dated 3/19/20	
T.	BOP 219-223	Invoice for Oxiver TB cleaner dated 3/30/20	
U.	BOP 224-225	Invoice for metal cleaner, polish dated 3/30/20	
V.	BOP 226-227	Invoice for hand sanitizer and drum pump dated 3/17/20	
W.	BOP 228-230	Invoice for HDQC2 dated 3/23/20	
X.	BOP 231-234	Invoice for N95 masks, N95 respirators, hand sanitizer dated 3/23/20	
Y.	BOP 235-236	Invoice for hand sanitizer dated 3/17/20	
Z.	BOP 237	Blank sick call request form	
AA.	Tekbali 1-112	Expert Report of Asma Tekbali dated May 7, 2020 with Exhibits 1-15.	Petitioners submitted a motion <i>in limine</i> concerning Ms. Tekbali's testimony. <i>See</i> Dkt. No. 86. Respondent opposed Petitioners' motion <i>in limine</i> . <i>See</i>

			Dkt. No. 89.
BB.	Tekbali Ex. 1	Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) (https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html)	
CC.	Tekbali Exhibit 2	Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19) (https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-criteria.html)	
DD.	Tekbali Exhibit 3	FAQ About 2019 Novel Coronavirus and COVID-19 for Health Care Providers (https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-provider-faqs.pdf)	
EE.	Tekbali Exhibit 4	Food Safety and Coronavirus Disease 2019 (COVID-19) (https://www.cdc.gov/foodsafety/newsletter/food-safety-and-Coronavirus.html)	
FF.	Tekbali Exhibit 5	National Multiple Sclerosis Society's website (https://www.nationalmssociety.org/coronavirus-covid-19-information/multiple-sclerosis-and-coronavirus#section-0)	
GG.	Tekbali Exhibit 6	Personal Protective Equipment: Questions and Answers (https://www.cdc.gov/coronavirus/2019-ncov/hcp/respirator-use-faq.html)	
HH.	Tekbali Exhibit 7	Cleaning and Disinfection for Community Facilities (https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html)	
II.	Tekbali Exhibit 8	Summary for Healthcare Facilities: Strategies for Optimizing the Supply of N95 Respirators during the COVID-19 Response (https://www.cdc.gov/coronavirus/2019-ncov/hcp/checklist-n95-strategy.html)	

JJ.	Tekbali Exhibit 9	Health Advisory: Discontinuation of Isolation for Patients with COVID-19 Who Are Hospitalized or in Nursing Homes, Adult Care Homes, or Other Congregate Settings with Vulnerable Residents (https://coronavirus.health.ny.gov/system/files/documents/2020/04/dohcovid-19-discontinuing-isolation-hospital-congregate-setting.pdf)	
KK.	Tekbali Exhibit 10	COVID-19: Guidance for Congregate Settings (https://www1.nyc.gov/assets/doh/downloads/pdf/imm/guidance-for-congregate-settingscovid19.pdf)	
LL.	Tekbali Exhibit 11	How to Protect Yourself & Others (https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/prevention.html)	
MM.	Tekbali Exhibit 12	Handwashing at Home, at Play, and Out and About (https://www.cdc.gov/handwashing/pdf/handwashing-poster.pdf)	
NN.	Tekbali Exhibit 13	Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings (https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-controlrecommendations.html)	
OO.	Tekbali Exhibit 14	What to Do If You Are Sick (https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html)	
PP.	Tekbali Exhibit 15	Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease 2019 (COVID-19) (https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html)	
QQ.	Tekbali 113	CV of Asma Tekbali	

RR.	Beard 1-11	Expert Report of Jeffrey A. Beard dated May 6, 2020	
SS.		CV of Jeffrey A. Beard, Ph.D.	
TT.	Dkt. Nos. 18-1 and 18-2	Declaration of Associate Warden Milinda King with Exhibits 1-3.	Petitioner objects to this declaration to the extent it contradicts the witness's deposition testimony.
UU.	Dkt. No. 18-2 (pages 2/47 to 31/47)	King Ex. 1 - Program Statement Community Corrections Center	
VV.	Dkt. No. 18-2 (page 33/47 to 36/47)	King Ex. 2 - CDC: Stop the Spread of Germs and "What to do if you are sick with coronavirus disease 2019 (COVID-19 19)	
WW.	Dkt. No. 18-2 (page 38/47 to 47/47)	King Ex. 3 - March 13, 2020 guidance regarding modified operations	
XX.	Dkt., No. 21	Supplemental Declaration of Associate Warden Milinda King and Ex. 4 (Action Plan Phase V)	Petitioner objects to this declaration to the extent it contradicts the witness's deposition testimony.
YY.	Dkt. No. 47-1	Declaration of Lt. Cmdr. D. Jordan	
ZZ.	Dkt. No. 81	Declaration of Associate Warden Milinda King dated May 7, 2020 with Exhibits A-H	Petitioner objects to this declaration to the extent it contradicts the witness's deposition testimony.

AAA.	KING 1-10 (Dkt. 81-1, Attachment A)	Program Statement 4500.12, Trust Fund/Deposit Fund Manual	
BBB.	KING 11-13 (Dkt. 81-1, Attachment B)	MDC Brooklyn A&O Handbook	
CCC.	KING 14-21 (Dkt. 81-1, Attachment C)	Photos of Soap	
DDD.	KING 22-27 (Dkt. 81-1, Attachment D)	MDC Brooklyn Commissary Lists	
EEE.	KING 32-62 (Dkt. 81-1, Attachment E)	Purchase Orders	
FFF.	KING 58-64 (Dkt. 81-1, Attachment F)	Hair Commissary Records	
GGG.	KING 65-72 (Dkt. 81-1, Attachment G)	Lopez Commissary Records	
HHH.	KING 73-81 (Dkt. 81-1, Attachment H)	Rabadi Commissary Records	
III.	Dkt. No. 82	Declaration of Associate Warden Caryn Flowers dated May 7, 2020 with Exhibits A- B	
JJJ.	FLOWERS 2-27 (Dkt. No. 82-1, Exhibit A)	Interim Guidance on Management of Coronavirus Disease 2019 (“COVID-19”) in Correctional and Detention Facilities.	
KKK.	FLOWERS 29 (Dkt. No. 82-1, Exhibit B)	3 North Unit Operation schedule	
LLL.	Dkt. No. 80	Declaration of Health Services Administrator Stacey Vasquez dated May 7,	Petitioner also objects to this

		2020 with Exhibits A-D	declaration to the extent it contradicts the witness's deposition testimony.
MMM.	VASQUEZ 34-35 (Dkt. No. 80-1, Attachment C)	Coronavirus Disease 2019, Symptoms of Coronavirus	
NNN.	VASQUEZ 36-39 (Dkt. No. 80-1, Attachment D)	NY DOH Updated Interim Guidance: Protocol for COVID-19 Testing Applicable to All Health Care Providers and Local Health Departments	
OOO.	MDC 1-13	Assessment of Metropolitan Detention Center, Brooklyn, New York COVID-19 Response	Obj. No. 4 ⁵
PPP.	MDC 14-15	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306; 07/01/2019, ECF No. 67 - Letter from United States as to Elodia Lopez requesting sentencing and detention of defendant	Obj. No. 1
QQQ.	MDC 16-22	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306; 10/04/2019, ECF No. 71 – Sentencing Memorandum	Obj. No. 1
RRR.	MDC 23-26	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306; 07/17/2019, ECF No. 69 –Order of Detention	Obj. No. 1
SSS.	MDC 27-33	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306;12/11/2019, ECF No. 76 - JUDGMENT	Obj. No. 1
TTT.	MDC 34-42	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306, Criminal Docket Sheet	Obj. No. 1
UUU.	MDC 181-183	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306 Letter to Court enclosing BOP denial of Lopez compassionate release request.	Obj. No. 1

⁵ Objection Nos. 1, 2, 3 and 4 are detailed *infra*.

VVV.	MDC 184-186	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306, May 1 U.S. response to Elodia Lopez's compassionate release motion.	Obj. No. 1
WWW.	MDC 179-180	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306 Letter to Court enclosing BOP denial of Lopez C. Release.	Obj. No. 1
XXX.	MDC 57-62	Elodia Lopez Sick Call Records	
YYY.	MDC 265-70	Elodia Lopez BOP Psychological Records	Obj. No. 1
ZZZ.	MDC 63-178	Elodia Lopez BOP Medical Records	
AAAA.	AR 1-2	Travel Itinerary - Rabadi, Ayman, Furlough Transfer -05/19/2020 and SENTRY record	
BBBB.		Withdrawn	
CCCC.	MDC 255-259	Dino Sanchez Superseding Indictment EDNY ; <i>U.S. v. Sanchez</i> , 19-cr-14	Obj. No. 1, No, 2
DDDD.	MDC 213-246	Dino. Sanchez Transcript, Bail Denial EDNY' <i>U.S. v. Sanchez</i> , 19-cr-14	Obj. No. 1, No, 2
EEEE.	MDC 203-212[Dino Sanchez U. S. Letter Seeking Detention <i>U. S. v. Sanchez</i> , S. EDNY 19-cr-14	Obj. No. 1, No, 2
FFFF.	MDC 247-254	Dino Sanchez Criminal Docket Sheet; <i>U.S. v. Sanchez</i> , 19-cr-14	Obj. No. 1, No, 2
GGGG.	MDC 196-202	Dino Sanchez 1.27.19 United States. Letter opposing Sanchez Bail Application; <i>U.S. v. Sanchez</i> , 19-cr-14	Obj. No. 1, No, 2
HHHH.	MDC 187	Hassan Chunn Inmate History Report	Obj. No. 1
IIII.	MDC 188	Hassan Chunn Inmate Discipline Data	Obj. No. 1
JJJJ.	MDC 189-190	Hassan Chunn Patient Assessment (Medical Records)	
KKKK.	MDC 191-195	Hassan Chunn Vitals MDC (Medical Records)	
LLLL.	MDC 271-275	Hassan Chunn Criminal docket sheet EDNY 16 Cr. 388	Obj. No. 1
MMMM.	MDC 276-292	MDC pictures	Petitioners object to this exhibit to the extent Respondent does not adequately authenticate it.
NNNN.	MDC 332-	James Hair's medical records	

	334, 335, 336-599, 600-870		
OOOO.	MDC 323-326	James Hair's sick call records	
PPPP.	MDC 327-331	Ayman Rabadi's sick call records	
QQQQ.	MDC 871-921, 922	Ayman Rabadi's medical records	
RRRR.	MDC 316-322	Inmate bulletins - Selection	
SSSS.	MDC 293-296; 310-315;	Dino Sanchez's medical records, sick call request (upon production of a HIPAA release)	Obj. No. 3
TTTT.	MDC 297-310	Dino Sanchez commissary receipts	Obj. No. 2
UUUU.	MDC 923-997	Dino Sanchez's medical records (upon production of a HIPAA release)	Obj. No. 2, No. 3
VVVV.	MDC 43-56	<i>U.S. v. Lopez</i> , NDNY, No. 93-cr-00306, Transfer of Jurisdiction	Obj. No. 1
WWWW.		Declaration of Assistant Human Resource Manager Arlene Ferguson-Houk, in response to the declaration of Anthony Sanon, and the Staff Screening Tool annexed thereto.	Obj. No. 1
XXXX.		Declaration of Tristan Rohlf, in response to the declaration of Anthony Sanon	
YYYY.		Supplemental Declaration of Health Services Administrator Stacey Vasquez, in response to the declaration of Anthony Sanon	

Respondent reserves the right to supplement this list for good cause shown.

Objection No. 1:

Petitioners object to documents regarding the criminal, disciplinary, and psychological histories of Petitioners and witnesses as impermissible under Rules 403 of the Federal Rules of

Evidence. These materials are irrelevant to the current proceedings, which concern the conditions of confinement at the MDC, and so should be excluded. Pursuant to Rule 403, even relevant evidence may be excluded “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. In weighing the admissibility of prior convictions under Rule 403, the most important factor is “whether the crime, by its nature, is probative of a lack of veracity.” *United States v. Brown*, 606 F. Supp. 2d 306, 312 (E.D.N.Y. 2009). Moreover, courts widely recognize that, once a party’s status as a convicted felon has been established through the admission of one conviction, the incremental probative value of additional convictions rapidly diminishes. *See, e.g., United States v. Vasquez*, 840 F. Supp. 2d 564, 573 (E.D.N.Y. 2009); *United States v. Washington*, 746 F.2d 104, 107 (2d Cir. 1984). Similarly, disciplinary records of a state ward plaintiff, *e.g.*, a prison inmate or psychiatric patient, are almost always inadmissible.” *Lombardo v. Stone*, No. 99-CV-4603, 2002 WL 113913, at *3 (S.D.N.Y. Jan. 29, 2002). Records related to the psychological history of Petitioners should also be excluded as they have no bearing on the subject of the litigation or on Petitioners’ credibility. *See United States v. Giovinco*, No. 18-CR-14 (JSR), 2020 WL 832920, at *2 (S.D.N.Y. Feb. 20, 2020) (excluding evidence of a witness’s psychological history of anxiety and depression as the “probative value of cross-examining [witness] on his mental health history would have been minimal at best”). Respondent’s Ex. WWW, which contains irrelevant and personal information regarding Mr. Sanon’s human resources records, are irrelevant and unduly prejudicial and thus impermissible under Rule 403.

Objection No. 2:

Petitioner objects to documents regarding the records pertaining to Dino Sanchez given that Mr. Sanchez is no longer being called as a witness.

Objection No. 3:

Petitioner objections to documents that Respondent has not yet been produced to Petitioners.

Objection No. 4:

With respect to Respondent's Ex. OOO, "Assessment of Metropolitan Detention Center, Brooklyn, New York COVID-19 Response," Petitioners object to this exhibit, but only in the event that Ms. English is not produced for testimony pursuant to the trial subpoena Petitioners served on her counsel (with their consent) yesterday. Petitioners were first served with this document on Saturday, May 9, 2020, three days before the hearing. Prior to yesterday, Respondent had never mentioned this document existed or that the BOP had conducted an inspection at the MDC a week ago, on May 2, 2020, and that a report would be forthcoming. The document was not attached to Respondent's opposition papers filed on May 7, 2020, and the document is undated and unsigned. Finally, Petitioners have not been given any opportunity to depose Ms. English, the putative author of the report.

Note on Hearsay:

Petitioners note that many of both Respondent's and Petitioners' proposed Exhibits contain hearsay that might otherwise be objectionable, however "hearsay is admissible to support or to oppose an application for a preliminary injunction. A preliminary injunction is an interim remedy, and the burdensome requirements of trial testimony are at odds with its provisional purpose. Through affidavits and hearsay testimony, a court may maximize the breadth of evidence without necessitating hearings that span days or weeks." *Mullins v. City of New York*,

634 F. Supp. 2d 373, 387 (S.D.N.Y. 2009), *aff'd*, 626 F.3d 47 (2d Cir. 2010). The court in *Mullins* noted that concerns about hearsay apply with “far lesser force when a judge serves as fact-finder, rather than a lay jury.” *Id.* at 388 *citing Van Alen v. Dominick & Dominick, Inc.*, 560 F.2d 547, 552 (2d Cir.1977).

Dated: New York, New York
May 11, 2020

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